United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

Henry W. Hodges

COURT OF APPEALS, DISTRICT OF COLUMBIA

OCTOBER TERM, 1906

No. 1688

435

AMERICAN SECURITY AND TRUST COMPANY,
APPELLANT,

v.

DISTRICT OF COLUMBIA.

No. 1689

UNION TRUST COMPANY, APPELLANT,

v.

DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

EDWARD H. THOMAS,
FRANCIS H. STEPHENS,
Attorneys for Appellee

Geo. E. Howard, Pr., Wash. 9163

To Mr. Glassie:

Please take notice that I have this 28″ day of May, 1906, requested the Clerk to make the record on appeal as above stated.

MASON N. RICHARDSON,
Solicitor for Complainant.

Service accepted, this 28th day of May, 1906.

HENRY H. GLASSIE, *Solicitor.*

The exhibits above referred to are bill, answer and decree in Eq. No. 23,483.

MASON N. RICHARDSON.

In addition to the foregoing the Clerk will add demurrer to bill, filed Feb'y 7, 1905, and order overruling the same, March 22, 1905.

HENRY H. GLASSIE,
Sol'r for Def'd't.

168 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 167, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, a copy of which is made part of this transcript, in cause No. 25,080 in Equity, wherein Lucy M. Davis, is Complainant, and Frank F. Davis, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 14″ day of June, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1686. Lucy M. Davis, appellant, *vs.* Frank F. Davis. Court of Appeals, District of Columbia. Filed Jun- 15, 1906. Henry W. Hodges, Clerk.

COURT OF APPEALS, DISTRICT OF COLUMBIA

OCTOBER TERM, 1906

No. 1688

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BRIEF FOR APPELLEE

STATEMENT OF THE CASE

These cases are to be heard together by consent, a similar state of facts and the same law being involved in each. The only difference between the cases is the amount and time of payment of the taxes paid by the plaintiffs in error, which do not affect the rule to be applied in these cases.

Each of the appellant companies is a corporation created and doing business in the District of Columbia, and paying taxes under the Act of October 1, 1890 (26 Stat. 629), providing for the formation of

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These cases are to be heard together by consent, a similar state of facts and the same law being involved in each. The only difference between the cases is the amount and time of payment of the taxes paid by the plaintiffs in error, which do not affect the rule to be applied in these cases.

Each of the appellant companies is a corporation created and doing business in the District of Columbia, and paying taxes under the Act of October 1, 1890 (26 Stat. 629), providing for the formation of

trust, loan, mortgage, and other corporations, section 16 of which provides that such companies shall make a verified statement within the first twenty days of each calendar year, to the Comptroller of the Currency, showing its gross earnings for the preceding calendar year, and:

> "Shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and one-half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

On the 1st of July, 1902, the Personal Tax Law was passed (32 Stat., pt. 1, p. 619), which provided in paragraph 5 that banks and trust companies shall make affidavit to the board of personal tax appraisers on or before the first day of August of each year as to the amount of its gross earnings for the preceding year ending the thirtieth of June, and shall pay to the collector of taxes six per centum on such gross earnings. Paragraph 5 concludes:

> "That so much of the Act approved October first, eighteen hundred and ninety, entitled 'An Act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby repealed."

The American Security and Trust Company paid to the District $1,525.33 on May 29, 1902, being payment for the first half of that calendar year under the Act of 1890 at one and one-half per cent.; and on Nov. 11 of the same year, paid a similar amount for the second

instalment. On May 29, 1903, the Company paid the sum of $12,236.66, under protest, for the year ending June 30, 1903, being at the rate of six per cent. under the Act of July 1, 1902.

The Union Trust Company, on May 29, 1902, paid to the District $1,209.28, the whole tax for that calendar year, at one and one-half per cent. under the Act of 1890. On May 29, 1903, it paid the sum of $4,162.99, the tax for the fiscal year ending June 30, 1903, at the rate of six per cent. under the Act of July 1, 1902.

Thus it will be seen that both of the appellants, for the period between July 1, 1902, and January 1, 1903, paid the tax of one and one-half per cent. under the Act of 1890 and the tax of six per cent. under the Act of 1902. As the latter Act does not contemplate double taxation, they were entitled to recover either the one and a half per cent. or the six per cent. paid for the period mentioned, as the decision might be that the Act of 1890, or the Act of 1902, was in force during that period. The Court below held that the Act of 1902 was in force during the period referred to, and therefore gave judgments for the lesser amounts —for the American Security and Trust Company, $1,525.33; for the Union Trust, $1,209.28. This latter judgment seems to have been a mistake, and should have been entered for half of that amount.

From these judgments the plaintiffs appealed.

ARGUMENT

I

The question, and the sole question, is whether the Act of July 1, 1902, took effect on the day of its passage, as decided by the Court below, or at some other

and future date, not mentioned or referred to in the Act itself.

It will be observed that the Act changed the tax year from the calendar year—i. e., from January 1st to December 31st, to the fiscal year—i. e., from July 1st of one year to June 30th of the succeeding year, and the Act was passed on the first day of the fiscal year. If the Act took effect on the day of its passage, which is the usual and ordinary construction given to statutes, then the day of passage happily coincided with the beginning of the fiscal year, and there is not difficulty whatever. If, however, the operation of the law be deferred to some other and future date, of which there is no mention or reference in the law itself, considerable embarrassment ensues—

a. Because the selection of such a date must be purely arbitrary, as none is designated in the law.

b. If the date selected be January 1, 1903, six months after the passage of the Act, which seems to be the position of the appellants, the selection is not only arbitrary, but makes the tax begin with the *calendar year*. As the Act, however, expressly changes the tax year to the *fiscal year*, this interpretation would seem to be a plain misconstruction of the spirit and letter of the law.

c. Again, if the operation of the law be postponed to the beginning of the next calendar year, i. e., the middle of the current fiscal year, January 1, 1903, and if the Act, on the day of its passage, superseded the Act of 1890, which was the effect of the decision in the case of the District of Columbia against Glass, 27 App. D. C. 576, what becomes of the right to tax for the period between July 1, 1902, and January 1, 1903? The appellants do not contend that the tax

is lost for the period, which should be their logical position, but that the Act of 1890 remained in force for that period, i. e., for six months after it had been repealed.

d. The most consistent argument of the appellants should be that the operation of the Act was destined for the beginning of the *next fiscal year,* and not for the middle of the current fiscal year—that is, that the Act should operate on the first of July, 1903, and not before. They have not the hardihood, however, to assume this attitude, for it almost necessarily involves a hiatus of six months between January 1 and July 1, 1903, when neither law would be in force, in addition to the other objections mentioned.

II

It is thought that the decision of this Court in the case of the District of Columbia against Glass, 27 App. D. C. 576, controls the present case. In that case the Court held that the provision of the Act of July 1, 1902, imposing a tax of four per cent. on the gross earnings of building associations for the preceding, was repealed by the Act of April 28, 1904, reducing the tax to two per cent., and that the latter Act went into effect on the day of its passage. The Court said, inter alia, 579:

> "There is no room for discussing whether the Act of April 28th, 1904, was in its operation retroactive of prospective in respect of the tax on building associations. It went into effect on the day of its approval, so far as building associations are concerned."

The quotation made in the above case from the case of the Dollar Savings Bank v. United States, 19 Wall.

227, also cited by the appellee in the Glass case, becomes apropriate to sustain the argument of the appellee in the case at bar:

> "No other assessment than that made by the statute was necessary to determine the extent of the bank's liability. An assessment is only determining the value of the thing taxed, and the amount of the tax required of each individual. It may be made by designated officers or by the law itself. In the present case the statute required every savings bank to pay a tax of five per cent. on all undistributed earnings made, or added during the year to their contingent funds. There was no occasion for any other assessment. This was a charge of a certain sum upon the bank, and without more it made the bank a debtor."

It is respectfully submitted that the decision of this Court in the case of the District of Columbia against Glass, above cited, disposes of the question raised here.

EDWARD H. THOMAS,
FRANCIS H. STEPHENS,
Attorneys for Appellee.

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1688.

THE AMERICAN SECURITY AND TRUST COMPANY, A CORPORATION, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JUNE 18, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1688.

THE AMERICAN SECURITY AND TRUST COMPANY, A CORPORATION, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 17, 1906.

In the Court of Appeals of the District of Columbia.

No. 1688.

THE AMERICAN SECURITY AND TRUST CO., a Corporation, Appellant,
vs.
THE DISTRICT OF COLUMBIA.

a Supreme Court of the District of Columbia.

At Law. No. 47491.

AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:—

1 *Declaration.*

Filed January 31, 1905.

In the Supreme Court of the District of Columbia, the 31st day of January, 1905.

At Law. No. 47491.

AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant.

The plaintiff, a body corporate, created and doing business under the laws of the United States in force in the District of Columbia, sues the defendant, a body corporate and municipal corporation, created by and existing under the laws in force in said District of Columbia, for money payable by defendant to plaintiff, for that whereas, heretofore, to wit, on the 29th day of May, 1902, the plaintiff had paid to the defendant the sum of, to wit, $1,525.33 being the first half of all taxes in lieu of personal taxes due by it to the defend-

ant for the entire year beginning January 1, 1902, and ending December 31, 1902, as provided by the Act of Congress approved October 1, 1890, chapter 1246, and thereafter, to wit, on the 13th day of August, 1902, the defendant, wrongfully and without authority of law, but claiming to be thereunto lawfully authorized by the act of
Congress approved July 1, 1902, chapter 1352, through its
2 officers and agents, the Board of Personal Tax Appraisers of
the District of Columbia assessed against the plaintiff a certain alleged tax in the sum of, to wit, $12,236.66 for the year beginning July 1, 1902, and ending June 30, 1903, including therein the period from July 1, 1902, to December 31, 1902, for which said last mentioned period the plaintiff had paid to the defendant the first half of all taxes in lieu of personal taxes due to defendant as aforesaid, the said assessment being $6,786.28 in excess of any sum to which the defendant was lawfully entitled; and thereafter, to wit, on the 21st day of August, 1902, the plaintiff protested against said assessment of tax for the period from July 1, 1902, to December 31, 1902, as wrongful and unlawful, and appealed therefrom to the Board of Personal Tax Appeals of the District of Columbia, and thereafter and while said protest and appeal was pending and undetermined, the plaintiff, on to wit, the 11th day of November, 1902, paid to the defendant the further sum of, to wit, $1,525.33, being the second half of all taxes in lieu of personal taxes due by it to the defendant for the entire year beginning January 1, 1902, and ending December 31, 1902, as provided in said Act of Congress approved October 1, 1890, and thereafter, on, to wit, the 26th day of March, 1903, the defendant, acting through its officers and agents, said Board of Personal Tax Appeals of the District of Columbia, ratified and affirmed said wrongful and unlawful assessment, and disregarding plaintiff's protest demanded that plaintiff pay the whole of said alleged assessment, including the part assessed for the period from July 1, 1902, to December 31, 1902, for which plaintiff had already paid the tax as aforesaid, and threatened plaintiff with distraint and
seizure and sale of its property unless plaintiff would yield to
3 its demands in that regard and pay the whole of said wrongful and illegal assessment and thereafter, plaintiff, on to wit, the 29th day of May, 1903, acting under duress and solely in order to avoid the distraint, seizure and sale of its property, then immediately pending and threatened by defendant, and being otherwise wholly without remedy to prevent the same, paid under protest to defendant, through its officer and agent, the Collector of Taxes of the District of Columbia, the sum of twelve thousand two hundred and thirty-six dollars and sixty-six cents ($12,236.66), being the amount of said tax so illegally and wrongfully assessed as aforesaid, and no part of said sum so paid has ever been repaid or reimbursed by defendant to plaintiff, or otherwise, although often requested so to do; and plaintiff claims six thousand seven hundred and eighty-six dollars and twenty-eight cents ($6,786.28), with interest thereon from the 29th day of May, 1903, besides costs.

2. The plaintiff further sues the defendant for other money payable by defendant to plaintiff, for money had and received by the

defendant for the use of the plaintiff, and plaintiff claims six thousand seven hundred and eighty-six dollars and twenty-eight cents ($6,786.28) with interest thereon from the 29th day of May, 1903, according to the particulars of demand hereto annexed, besides costs.

ALDIS B. BROWNE,
GEORGE E. HAMILTON,
Attorneys for Plaintiff.

4 The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof; otherwise judgment.

ALDIS B. BROWNE,
GEO. E. HAMILTON,
Attorneys for Plaintiff.

Particulars of Demand.

1903.		
May 29.	Amount of tax assessed by defendant against plaintiff for year ending June 30, 1903, under alleged authority of Par. 5, of Section 6 of Act of Congress approved July 1, 1902, Ch. 1352, (being 6% of plaintiff's gross earnings for year ending June 30, 1902), and paid by plaintiff to defendant, as aforesaid	$12,236.66
do. do.	Less amount of tax for period from January 1, 1903, to June 30, 1903, lawfully due to defendant by plaintiff under provisions of said Act of Congress approved July 1, 1902, (being 6% of $113,104.74, plaintiff's gross earnings for period from January 1, 1902, to June 30, 1902)	5,450.38
	Amount due to plaintiff from defendant as aforesaid	$6,786.28

5 *Plea.*

Filed February 23, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47491.

AMERICAN SECURITY AND TRUST COMPANY
vs.
THE DISTRICT OF COLUMBIA.

The defendant, The District of Columbia, for pleas to the plaintiff's declaration filed herein, and each and every count thereof, says:—

1. It never promised as alleged.
2. It never was indebted as alleged.

A. B. DUVALL,
Attorney for Defendant.

Stipulation of Facts.

Filed July 15, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47491.

AMERICAN SECURITY & TRUST COMPANY, a Corporation, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA.

It is hereby stipulated by the counsel for the respective parties, that the above entitled cause be, and is hereby submitted to
6 the Court for hearing and judgment upon the following agreed facts, trial by jury being expressly waived:

I.

The plaintiff is a corporation engaged in carrying on in the District of Columbia a safe deposit, trust, loan and mortgage business, under authority of the Act of Congress approved October 1, 1890, (26 Stats., 625, Ch. 1246) entitled "An Act to provide for the in-"corporation of trust, Loan, mortgage and certain other corporations "within the District of Columbia," and which act and all parts thereof may be read and considered in evidence in this cause. That said company has been so engaged in said business under said Act since November 17, 1890, pursuant to certificate of the Comptroller of the Currency, made on the last named date in accordance with Section 11 of said Act. That by Section 16 of said Act of Congress, approved October 1, 1890, it is provided as follows:—

"That every such company shall annually, within twenty days after the first of January of each year make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, and the gross earnings for the year ending December thirty-first then next previous, together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the President, Secretary, and at least three of the directors or trustees; and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and a half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

7 That the American Security and Trust Company has, annually, made return of grosss earnings for the year ending December 31, then next preceding, in accordance with the foregoing provisions of section 16 of said Act, the first return of said plaintiff company being so made to December 31, 1891, and thereafter to and including the year ending December 31, 1901. That said plaintiff company has, year by year, following the 31st of December, 1891, paid to the District of Columbia, in accordance with the provisions of section 16 of the said act of Congress, approved October 1, 1890, the personal tax of one and a half per centum on the gross earnings for the preceding year, and on or about the 22d day of May, 1902, reported to the Assessor of the District of Columbia the gross earnings of said company for the year ending December 31, 1901; that said plaintiff company, on or about the 29th day of May, 1902, paid to the Collector of Taxes of the District of Columbia one-half of the entire tax assessed and levied upon said company by and under the said Act of October 1, 1890, for the next ensuing year, to wit, the calendar year ending December 31, 1902.

That the plaintiff company was thereafter required by the Assessor for the District of Columbia to make return of the gross earnings of said company for the period commencing July 1, 1901, and ending June 30, 1902, pursuant to the requirement of Section 6 of the Act of Congress approved July 1, 1902, entitled "An Act making appropriation to provide for the expenses of the Government of the District of Columbia, for the fiscal year ending June 30, 1903, and for other purposes;" that said return was made, accompanied by the following protest in writing:—

8 "To the Commissioners of the District of Columbia, the Assessor of the District of Columbia, the Board of Personal Tax Appraisers of the District of Columbia.

"GENTLEMEN: The American Security & Trust Company hereby "makes its accompanying return of gross earnings for the period "commencing July 1, 1901, and ending June 30, 1902, pursuant "to the requirements of section six of the act of Congress approved "July 1, 1902, entitled 'An Act making appropriations to provide "'for the expenses of the government of the District of Columbia for "'the fiscal year ending June 30, 1903, and for other purposes,' "under protest. And said company hereby respectfully insists that "no assessment can or should lawfully be made or enforced against "it based upon the gross earnings of said company between the "period aforesaid, to wit, July 1, 1901, and June 30, 1902, because "assessment has been heretofore made against said company, and "under then existing law, based upon its gross earnings for the "calendar year 1901, and hence including six months for the fiscal "year commencing July 1, 1901, and ending June 30, 1902; the "entire and indivisible tax due upon such assessment has been levied "and partial payment thereof has been made in the time and manner required by law.

"The said American Security & Trust Company is a corporation "doing business in the District of Columbia under and pursuant to

"the authority of the act of Congress approved October 1, 1890, "entitled 'An Act to provide for the incorporation of trust, loan, "mortgage, and certain other corporations within the District of Co- "lumbia,' section sixteen whereof provides:

"'That every such company shall annually, within twenty days "'after the first of January of each year, make a report to the Comp- "'troller of the Currency, which shall be published in a newspaper "'in the District, which shall state the amount of capital and of the "'proportion actually paid the amount of debts, and the gross earn- "'ings for the year ending December thirty-first then next previous, "'together with their expenses, which report shall be signed by the "'president and a majority of the directors or trustees, and shall be "'verified by the oath of the president, secretary, and at least three "'of the directors or trustees; and said company shall pay to the Dis- "'trict of Columbia, in lieu of personal taxes for each next ensuing "'year, one and half per centum of its gross earnings for the preced- "'ing year, shown by said verified statement, which amount shall be "'payable to the collector of Taxes at the times and in the manner "'that other taxes are payable.'

9 "The said American Security and Trust Company has an- "nually since the date of said Act of Congress, approved "October 1, 1890, and in the time required thereby, made verified "report and statement to the Comptroller of the Currency and duly "published the same as required by said act, and on or about the "22d day of May, 1902, reported to the assessor of the District of Co- "lumbia that the gross earnings of the company for the year ending "December 31, 1901, amounted to the sum of $203,377.06, as shown "by its annual report made and published as aforesaid; and on or "about the 29th day of May, 1902, said company paid to the col- "lector of taxes of the District of Columbia one-half of the entire tax "assessed and levied upon said company by and under the said act "of October 1, 1890, to wit, the sum of $1,525.33, leaving then due "and payable in November, 1902, the remaining half of such entire "tax the said assessment of tax and payment thereof being for the "*'next ensuing year'* following the calendar year 1901, as by sec. 16 "of the act of October 1, 1890, expressly provided.

"Wherefore the said American Security and Trust Company "denies that any lawful tax can or should be assessed against it under "the act of Congress approved July 1, 1902, aforesaid, based upon "the gross earnings of said company, for any period of time whatso- "ever preceding the first day of January, 1903, and hence protests "against the making or enforcement thereof.

"THE AMERICAN SECURITY AND TRUST COMPANY,
"By CHARLES J. BELL, *President.*"

That the Assessor ruled thereon as follows:—

"WASHINGTON, D. C., *August* 13, 1902.

"Mr. Henry F. Blount, Vice President American Security & Trust Co.

"DEAR SIR: I have received return of gross earnings of the "American Security & Trust Company, for fiscal year 1902, ac-

"companied by a protest against collection of the tax on same pre-
"scribed by act of Congress approved July 1, 1902; said protest being
"based upon the ground that your company has made return to the
"Comptroller of the Currency of its gross earnings for the calendar
"year 1901, and that it has paid the first half of tax on same as pre-
"scribed by section 16 of Act of Congress approved October 1, 1890.

"That portion of the act of October 1, 1890, relating to taxation
"of corporations referred to therein, is specifically repealed by act
"of July 1, 1902.

"The fact that your company has made return of its gross receipts
"for the calendar year 1901, and paid half the tax upon the same,
"as required by the act of October 1, 1890, does not affect its liability
"for taxation under the act of July 1, 1902.

"Congress, by act of October 1, 1890, imposed cetrain conditions upon the corporations taking advantage of the terms
"of said act. One of those conditions was that such corporations
"should pay certain tax at certain times, and in a certain manner.
"Section 34 of the Act of October 1, 1890, in part provides:

"'* * * that Congress may at any time alter, amend, or re-
"'peal this act * * *.'

"In the exercise of its prerogatives Congress, by act of July 1,
"1902, made certain changes in the mode of taxation of corporations
"such as this, which changes took effect July 1, 1902.

"This act of July 1, 1902, requires taxes imposed under its pro-
"visions, to be paid at the same time as taxes on real estate.

"The act of Congress approved February 14, 1902, in part pro-
"vides as follows:

"'That hereafter, beginning with the fiscal year Commencing
"'July first, nineteen hundred and two, the whole tax on real and
"'personal property in the District of Columbia shall be payable in
"'the month of May of each year.'

"It follows that we shall be obliged to take the statement of the
"gross earnings of your company for the fiscal year 1902, as a basis
"for taxation for fiscal year 1903, and to charge upon the same 6
"per cent. the whole of which tax will be due and payable in May,
"1903.

"Respectfully,
(Signed) H. H. DARNEILLE,
"*Assessor, D. C.*
"H. A."

From this ruling the following appeal was seasonably filed:—

"American Security and Trust Company, 1405 G Street Northwest.

WASHINGTON, D. C., *August* 21, 1902.

"H. H. Darneille, Esq., Assessor, District of Columbia.

"DEAR SIR: The American Security and Trust Company hereby
"respectfully appeals to the Board of Personal Tax Appeals from
"your ruling and action on August 13, 1902, overruling the protest

"filed by said company with its return of gross earnings for
11 "the fiscal year 1902, presented by the Act of Congress and
"approved July 1, 1902, and holding—
"'that we shall be obliged to take the statement of the gross earn-
"'ings of your company for the fiscal year 1902, as a basis for taxa-
"'tion for fiscal year 1903, and to charge upon the same 6 per cent.,
"'the whole of which tax will be due and payable in May, 1903.'
"Very respectfully,
"AMERICAN SECURITY AND TRUST COMPANY,
"By HENRY F. BLOUNT, *Vice-President.*"

That while such appeal was pending and undetermined, and on November 11, 1902, the plaintiff company tendered to Eldred G. Davis, Esq., the Collector of Taxes for the District of Columbia, the sum of $1,525.33, in payment of the second half of taxes due for the calendar year 1902, on $203,377.00, which was the amount of gross earnings of the plaintiff company for the year ending December 31, 1901, which said amount of $1,525.33 was accepted by the said Davis as Collector of Taxes. That in making said payment same was accompanied by a communication from the plaintiff company as follows:

"WASHINGTON, D. C., *November* 11, 1902.

"Eldred G. Davis, Esq., Collector of Taxes, District of Columbia.

"SIR: The American Security and Trust Company of the District
"of Columbia tenders you, herewith, in United States currency, the
"sum of one thousand five hundred and twenty-five dollars and
"thirty-three cents ($1,525.33) in payment of the second half of
"tax on Two Hundred and three thousand three hundred and
"seventy-seven dollars ($203,377) being the amount of gross earn-
"ings of said company for the calendar year 1901, and whereon
"tax was assessed by the provisions of section sixteen of the Act of
"Congress approved October 1, 1890, entitled "An Act to provide
"for the incorporation of trust, loan, mortgage and certain 'other
"corporations within the District of Columbia,' upon the report of
"said company to the Comptroller of the Currency on January 15,
"1902.
12 "The first half of the said tax was duly paid to you on
"May 29, 1902, and for which payment this Company holds
"your receipt.
"Very respectfully,
"AMERICAN SECURITY & TRUST COMPANY,
"By —— ——, *President.*

That the question raised by such appeal and protest was thereafter referred to the Corporation Counsel for the District of Columbia, who, on March 26, 1903, rendered to the Board of Personal Tax Appeals the following opinion:—

"Offices of the Law Department of the District of Columbia,
Columbian Building, 416-418 Fifth St. N. W.

"WASHINGTON, *March* 26, 1903.

"Board of Personal Tax Appeals, District of Columbia.

"GENTLEMEN: I have duly considered the enclosed *protest and "appeal of the American Security & Trust Company from the ruling "and action of the Assessor on August 13, 1902,* overruling the pro- "test filed by said Company with its return of gross earnings for the "fiscal year 1902, which, at your request, the Commissioners re- "ferred to me for opinion.

"Counsel for the Trust Company have submitted an able brief in "support of their contentions, but I find myself unable to agree "with their view of the law.

"The act of Congress approved October 1, 1890, entitled 'An Act "to provide for the incorporation of trust, loan, mortgage and cer- "tain other corporations within the District of Columbia,' provided "in section 16 that every such company should annually within "twenty days after January first of each year, make a report to the "Comptroller of the Currency, stating the amount of capital, &c., "and the gross earnings for the year ending December 31st then "next previous, &c.; "and 'said company shall pay to the District "'of Columbia in lieu of personal taxes for each next ensuing year "'one and one-half per centum of its gross earnings for the pre- "'ceding year shown by said certified statement, which amount shall "'be *payable* to the Collector of Taxes, at the times and in the Man-
"'ner that other taxes are payable.'

13 "There was no assessment to be made by the Assessor or "any other municipal officer; no other assessment than that "made by the statute was necessary. One-half of the tax *due* and "*payable* in May and one-half *in November,* and not otherwise.

"Section 6 of the act of Congress approved July 1, 1902, provides "that 'hereafter the Assessor shall annually cause to be prepared a "'printed blank schedule of all tangible personal property, &c., sub- "'ject to taxation, and that the amount of the tax thus ascertained "'shall be entered upon the books for taxation for the fiscal year "'beginning *July 1, 1902,* and each fiscal year thereafter.'

"Said section also requires every person, company, &c., holding "personal property in trust liable to taxation to make the necessary "return within thirty days after the publication of the advertise- "ment mentioned therein.

"Paragraph 5 of said section 6 provides that each trust company "'shall make affidavit to the Board of Personal Tax Appraisers *on "'or before the first day of August of each year* as to the amount of "'its or their gross earnings for the preceding year ending the 30th "'day of June, and shall pay to the collector of Taxes of the District "'of Columbia a per centum of such gross earnings as follows; "'* * * Trust Companies, six per centum * * * provided, "'* * * that so much of the Act approved October 1, 1890, en- "'titled "An act to provide for the incorporation of trust, loan, "'"mortgage, and certain other corporations within the District of

" ' "Columbia" as is inconsistent with the provisions of this section " 'is hereby repealed.'

" The Act of July 1, 1902, in clear and express words imposes this " tax.

" The Trust Company stated its gross earnings for the year ending " December 31, 1902, and paid one-half of the tax of the next en- " suing year; namely, the year beginning January 1, 1902, and end- " ing December 31, 1902. It is claimed that the tax under the act " of 1890 is a tax for the entire calendar year, and that such tax is " indivisible; but the company has no vested right under its charter " in respect to the mode or rate of taxation down to and including " December 31, 1902, because under that act the right to 'alter, " 'amend or repeal' was expressly reserved; and this provision was as " much a part of the Act incorporating the Company as the remain- " ing portions authorizing it to do business; and Congress by the Act " of July 1, 1902, expressly repealed such provisions of the Act of " October 1, 1890, as were inconsistent with the provisions of said " section 5,—the only inconsistent provisions were the rate and mode " of taxation.

14 " One-half of the tax under the Act of 1890 was not *due* " *and collectible* until November of 1902, four months after " July 1, 1902; nor is there any claim in behalf of the District that " the installment which would have fallen due in November is to be " paid by the trust companies. The case, therefore, does not neces- " sarily present any question of double taxation.

" The Act of July 1, 1902, provides explicitly for 'taxation for " 'the fiscal year beginning July 1, 1902, and each fiscal year there- " 'after,' and requires all the taxes imposed thereunder to be paid at " the same time as the tax on real estate.

" Unless the act of July 1, 1902, is construed according to its ex- " press terms, the very improbable result would follow that Congress " intended to wholly exempt these companies from any tax between " January 1, 1903, and June 1, 1903, because there would be no " authority of law for its imposition and collection. To entertain " such a supposition would be most unreasonable.

" By the Act approved February 14, 1902, it was provided that " 'hereafter, beginning with the fiscal year commencing July 1, " '1902, the whole tax on real and personal property in the District " 'of Columbia shall be payable in the month of May of each year.'

" I am, therefore, of opinion that the Assessor properly ruled that " the statement of the gross earnings of the company for the fiscal " year 1902 was the proper basis for taxation for the fiscal year 1903, " upon which the tax of six per centum was chargeable, the whole of " which would be due and payable in May, 1903.

" Very respectfully,

"(Signed) A. B. DUVALL,
" *Corporation Counsel.*"

This opinion was approved by the Board of Personal Tax Appeals and the appeal and protest of the plaintiff company thereupon overruled.

II.

That pursuant to this action and on May 29, 1903, the plaintiff company paid to the said Eldred G. Davis, as Collector of Taxes for the District of Columbia, the sum of $12,236.66 being at the rate of six per centum upon the amount of its gross earnings for the year beginning July 1, 1901, and ending June 30, 1902, said payment being made under the following written stipulation, to wit:—

"*In re* Assessment of Personal Tax against the American Security and Trust Company of Washington, D. C.

"The American Security and Trust Company having made return "of gross earnings for the fiscal year ending June 30, 1902, to the "Assessor of Taxes for the District of Columbia, under the assumed "requirement of section 6 of the act of Congress approved July 1, "1902, and such return having been made by the Company under "protest duly filed therewith, based upon the ground that neither "return, assessment nor taxes was due from said company under "said act of July 1, 1902, for any portion of the current year 1902, "because said company has theretofore made return of gross earnings for the entire calendar year 1901, and has paid one-half of the "tax assessed thereon pursuant to the requirements of Section 16, "of the act of Congress approved October 1, 1890, (Stats., p. 625) "by which its rights and obligations with respect to such personal "tax for the calendar year 1902 was fixed and determined prior "to the passage of the act of July 1, 1902. And said protest having "been overruled, and payment required from said company by the "Assessor of the District as under the act of July 1, 1902, for the "six months beginning July 1, and ending December 31, 1902; "and the question of law thereon arising having been ruled adversely to the company under the opinion of the Corporation Counsel, with the understanding that the question so ruled should be "submitted upon a stated case for judicial determination in the "courts of appropriate jurisdiction.

"The premises considered, it is now hereby mutually understood, "on behalf of the District of Columbia, and its governing officers, "including the Board of Personal Tax Assessors and the Collector of "Taxes, on the one hand, and the American Security and Trust "Company upon the other, that payment of the tax exacted from "said company under said return and of the official ruling thereon, "shall be received by the Collector of Taxes for the District of Columbia from said company as tendered and paid under duress, "and with as full legal effect in all respects and for all purposes as "if so made after issuance of distress warrant, and to avoid levy or "attachment thereunder, and as if made under full, sufficient and "formal protest by said company.

"This understanding shall apply also to the payment of personal "taxes by the Washington Loan and Trust Company, The National "Safe Deposit, Savings and Trust Company, and the Union Trust "and Storage Company, which latter company has heretofore paid

"the entire tax due and imposed for the calendar year 1902, under "the act of October 1, 1890.

"(Signed) HENRY L. WEST,
16 "(Signed) JOHN BIDDLE,
"Commissioners of the District of Columbia.

"(Signed) A. B. DUVALL,
"Corp'n Counsel.

"June 1, 1903.

"(Signed) A. B. BROWNE,
"(Signed) GEORGE E. HAMILTON,
"Att'ys American Security & Trust Co., Washington Loan & Trust Co., National Safe Deposit & Trust Co., Union Storage & Trust Co."

Copy.

That the gross earnings of the plaintiff company for the period commencing July 1, 1901, and ending December 31, 1901, amounted to the sum of $113,104.74; that the tax assessed thereon by the Assessor for the District of Columbia and the Board of Personal Tax Appeals, at the rate of six per centum upon such gross earnings, and which was paid by the plaintiff company amounts to the sum of $6,786.28, and is the amount for which the plaintiff company is now suing to recover in this action, pursuant to its protest and appeal, and for which the plaintiff company here demands judgment.

That the payment by the plaintiff company on May 29, 1903, was accompanied by a letter from the plaintiff company, dated May 29, 1903, as follows:—

"WASHINGTON, D. C., *May* 29, 1903.

"The Collector of Taxes, District of Columbia.

"SIR: The American Security and Trust Company herewith "tenders you in lawful currency the sum of $12,236.66 in payment "of the personal tax assessed against that company for the fiscal "year ending June 30, 1902, by the Assessor of Taxes under the "alleged authority of section six of the Act of Congress approved "July 1, 1902.

17 "The return of gross earnings made by the company under "the act aforesaid was accompanied by its written protest "against the assessment of any tax against it under said act based "upon the gross earnings of the Company for any period of time, "whatsoever preceding the first day of January, 1903, because the "assessment and tax imposed upon the Company under the Act of "Congress approved October 1, 1890, whereunder it was incor-"porated covered in such assessment and payment the full calendar "— 1902. Such protest was overruled by the Assessor and on appeal "to the Board of Personal Tax Appeals the opinion of the Corpora-"tion Counsel was rendered and approved adverse to the position "taken by the Company.

"Meantime, and in accord with the position taken by the Com-
"pany in such pending protest, the company on November 14, 1902,
"made written tender of the second half of the personal tax cover-
"ing the period to December 31, 1902, due and payable under the
"Act of October 1, 1890, and such payment was accepted by you,
"in amount $1,525.33.

"The amount of tax now assessed against the Company under
"the Act of July 1, 1902, for the fiscal year ending June 30, 1903,
"at six per cent. upon its gross earnings for the preceding fiscal
"year—July 1, 1901, to June 30, 1902, in amount $12,236.66, as
"above stated is now tendered and paid by the American Security
"and Trust Company, under protest, and to avoid threatened and
"impending levy and seizure of its property in satisfaction thereof,
"and with continued claim that for the year ending December 30,
"1902, its payment of one-half of the tax imposed for such calendar
"year made in May, 1902, to wit, the sum of $1,525.33, and by pay-
"ment of like sum on November 14, 1902, as the remaining one-
"half of such tax for such calendar year 1902, should and did fully
"satisfy and discharge all and singular the liability of the Company
"under the law for any and all personal taxes up to and including
"the calendar year ending December 31, 1902, and that for any
"period to said last named date it was not and is not liable for any
"additional tax sought to be imposed upon it under the authority
'of the act of July 1, 1902.

"THE AMERICAN SECURITY AND TRUST
COMPANY,
"By C. J. BELL, *President.*"

III.

It is hereby further stipulated that if it be found by the Court that the aforesaid tax of $12,236.66 was lawfully assessed against
18 the plaintiff for the year ending June 30, 1903, and that the plaintiff is not entitled to recover for any part of said tax, paid by it as aforesaid, then and in that event plaintiff shall be entitled to judgment against defendant for the sum of fifteen hundred and twenty-five dollars and thirty-three cents ($1,525.33), paid by it to the defendant on the 11th day of November, 1902, for the second half of the taxes in lieu of personal taxes for the year ending December 31, 1902, and assessed under the provisions of the Act of Congress approved October 1, 1890, Chapter 1246.

ALDIS B. BROWNE,
GEO. E. HAMILTON,
Att'ys for Plaintiff.
A. B. DUVALL,
F. H. STEPHENS,
Att'ys for Defendant.

Supreme Court of the District of Columbia.

FRIDAY, *May* 18*th*, 1906.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * * * *

No. 47491. At Law.

AMERICAN SECURITY AND TRUST COMPANY, a Corporation, Pl'ff,
vs.
THE DISTRICT OF COLUMBIA, Def't.

19 The plaintiff herein by its attorneys Messrs. A. B. Browne, and the defendant by its attorneys Messrs. E. H. Thomas & F. H. Stephens, having by stipulation filed herein July 15th, 1905, waived trial of this cause by a jury and agreed to a trial before the court on an agreed statement of facts filed herein and having heretofore argued and submitted the case to the court, the court finds in favor of the plaintiff for the sum of $1525.33 with interest at 4% from May 29th, 1903.

Thereupon, it is considered and adjudged that the plaintiff herein recover of defendant herein, the sum of One Thousand Five Hundred and Twenty-Five Dollars and Thirty-three cents, with interest thereon at four per centum per annum from May 29th, 1903, together with costs of suit to be taxed by the clerk and have execution thereof.

From the aforegoing the plaintiff by its attorneys in open Court notes an appeal to the Court of Appeals, and bond for costs on such appeal is hereby fixed in the sum of One Hundred Dollars, with surety or sureties to be approved by this Court.

Memorandum.

May 25, 1906.—Appeal Bond,—filed.

20 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 19, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 47,491 At Law, wherein American Security and Trust Company, a Corporation, is Plaintiff, and the District of Columbia, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 18″ day of June, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia Supreme Court. No. 1688. The American Security and Trust Co., a corporation, appellant, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Jun- 18, 1906. Henry W. Hodges, clerk.

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1906.

No. 1689.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, FORMERLY STYLED UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT

vs.

THE DISTRICT OF COLUMBIA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED JUNE 18, 1906.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1906.

No. 1689.

UNION TRUST AND STORAGE COMPANY, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JUNE 21, 1906.

In the Court of Appeals of the District of Columbia.

No. 1689.

UNION TRUST Co., &c., Appellant,
vs.
THE DISTRICT OF COLUMBIA.

a Supreme Court of the District of Columbia.

At Law. No. 47714.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Formerly Styled UNION TRUST AND STORAGE COMPANY, of the District of Columbia, a Corporation, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to-wit:—

1 *Declaration.*

Filed May 10, 1905.

In the Supreme Court of the District of Columbia, the 10th Day of May, 1905.

At Law. No. 47714.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Formerly Styled UNION TRUST AND STORAGE COMPANY, of the District of Columbia, a Corporation, Plaintiff,
vs.
THE DISTRICT OF COLUMBIA, Defendant.

The plaintiff, a body corporate, created and doing business under the laws in force in the District of Columbia, since the 11th day of February, 1905, under the corporate name and style of Union Trust Company of the District of Columbia, but prior thereto and at all the

times hereinafter mentioned under the corporate name and style of Union Trust and Storage Company of the District of Columbia, sues the defendant, a body corporate and municipal corporation, created by and existing under the laws in force in said District of Columbia, for money payable by defendant to plaintiff, for that whereas, heretofore, to wit, on the 29th day of May, 1902, the plaintiff had paid to the defendant the sum of, to wit, $1209.28, being the whole of the tax in lieu of personal taxes due by it to the defendant for the year beginning January 1, 1902, and ending December 31, 1902, as provided by the Act of Congress approved October 1, 1890, chapter 1246, and thereafter, to wit, on the 13th day of August, 1902, the defendant, wrongfully and without authority of law, but
2 claiming to be thereunto lawfully authorized by the Act of Congress approved July 1, 1902, chapter 1352, through its officers and agents, the Board of Personal Tax Appraisers of the District of Columbia, assessed against the plaintiff a certain alleged tax in the sum of, to wit, $4,162.99 for the year beginning July 1, 1902, and ending June 30, 1903, including therein the period from July 1, 1902, to December 31, 1902, for which said last mentioned period the plaintiff had paid to the defendant all taxes in lieu of personal taxes due to defendant as aforesaid, the said assessment being $2,065.00 in excess of any sum to which the defendant was lawfully entitled; and thereafter plaintiff, on, to wit, the 29th day of May, 1903, acting under duress and solely in order to avoid the distraint, seizure and sale of its property, then immediately pending and threatened by defendant, and being otherwise wholly without remedy to prevent the same, paid under protest to defendant, through its officer and agent, the Collector of Taxes of the District of Columbia, the sum of, to wit, four thousand one hundred and sixty-two dollars and ninety-nine cents ($4,162.99) being the amount of said tax so illegally and wrongfully assessed as aforesaid, and no part of said sum so paid has ever been repaid or reimbursed by defendant to plaintiff, or otherwise, although often requested so to do; and plaintiff claims two thousand and sixty-five dollars ($2,065.) with interest thereon from the 29th day of May, 1903, besides costs.

2. The plaintiff further sues the defendant for other money payable by defendant to plaintiff, for money had and received by defendant for the use of the plaintiff and plaintiff claims two thou-
3 sand and sixty-five dollars ($2,065.) with interest thereon from the 29th day of May, 1903, according to the particulars of demand hereto annexed, besides costs.

GEORGE E. HAMILTON,
ALDIS B. BROWNE,
Attorneys for Plaintiff.

The defendant is to plead hereto on or before the twentieth day, exclusive of Sundays and legal holidays, occurring after the day of the service hereof, otherwise judgment.

GEORGE E. HAMILTON,
ALDIS B. BROWNE,
Attorneys for Plaintiff.

4 *Particulars of Demand.*

Filed May 10, 1905.

1903.		
May 29th.	Amount of tax assessed by defendant against plaintiff for year ending June 30, 1903, under alleged authority of Par. 5 of Sec. 6 of the Act of Congress approved July 1, 1902, Ch. 1352 (being 6% of plaintiff's gross earnings for the year ending June 30, 1902), and paid by plaintiff to defendant, as aforesaid.....	$4,162.99
Do. do.	Less amount of tax for period from January 1, 1903, to June 30, 1903, lawfully due to defendant by plaintiff under the provisions of said Act of Congress approved July 1, 1902, (being 6% of $34,966.58, plaintiff's gross earnings for the period from January 1, 1902, to June 30, 1902).	$2,097.99
	Amount due to plaintiff from defendant....	$2,065.00

5 *Stipulation.*

Filed July 15, 1905.

In the Supreme Court of the District of Columbia.

At Law. No. 47714.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA
vs.
THE DISTRICT OF COLUMBIA.

It is hereby stipulated by the attorneys for the respective parties that the above entitled cause shall abide the result of the judgment in the case of American Security and Trust Company against the District of Columbia, said cause being numbered 47,491 on the Law Docket of the Court.

ALDIS B. BROWNE,
GEORGE E. HAMILTON,
Attorneys for Plaintiff.
A. B. DUVALL,
F. H. STEPHEN,
Attorneys for Defendant.

6 Supreme Court of the District of Columbia.

FRIDAY, *May* 18*th*, 1906.

Session resumed pursuant to adjournment, Hon. Thos. H. Anderson, Justice, presiding.

* * * * * * *

At Law. No. 47714.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, Pl'ff,
vs.
THE DISTRICT OF COLUMBIA, Def't.

The plaintiff and defendant herein having by their respective attorneys, per stipulation filed herein July 15th, 1905, agreed that this cause shall abide the result of the judgment, in the case of American Security and Trust Company *vs.* District of Columbia, No. 47491 at law, it is considered and adjudged that plaintiff herein recover of defendant herein the sum of One Thousand Two Hundred and Nine Dollars and twenty-eight cents with interest thereon at the rate of four per cent. from May 21st, 1903, together with costs of suit to be taxed by the Clerk, and have execution thereof.

From the aforegoing the plaintiff by its attorneys notes an appeal and bond for costs is hereby fixed in the sum of One Hundred Dollars.

Memorandum.

May 23, 1906.—Appeal bond filed.

7 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 6, inclusive, to be a true and correct transcript of the record, as per Rule 5 of the Court of Appeals of the District of Columbia, in cause No. 47,714 at law, wherein, Union Trust Company of the District of Columbia, formerly styled Union Trust and Storage Company, &c., is Plaintiff, and the District of Columbia, is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the city of Washington, in said District, this 18″ day of June, A. D. 1906.

[Seal Supreme Court of the District of Columbia.]

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1689. Union Trust Co., &c., appellant, *vs.* The District of Columbia. Court of Appeals, District of Columbia. Filed Jun- 18, 1906. Henry W. Hodges, clerk.

Court of Appeals, District of Columbia.

OCTOBER TERM, 1906.

No. 1688.

THE AMERICAN SECURITY AND TRUST COMPANY,
A CORPORATION, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

No. 1689.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, FORMERLY STYLED UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

ALDIS B. BROWNE,
GEO. E. HAMILTON,
Counsel for Appellants.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C. 24184

Court of Appeals, District of Columbia.

OCTOBER TERM, 1906.

No. 1688.

THE AMERICAN SECURITY AND TRUST COMPANY,
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No. 1689.

UNION TRUST COMPANY OF THE DISTRICT OF COLUMBIA, FORMERLY STYLED UNION TRUST AND STORAGE COMPANY OF THE DISTRICT OF COLUMBIA, A CORPORATION, APPELLANT,

vs.

THE DISTRICT OF COLUMBIA.

BRIEF FOR APPELLANTS.

Statement.

No. 1688.

This is an appeal by the American Security and Trust Company from a judgment of the Supreme Court of the District of Columbia, rendered May 18, 1906 (R., 14), in an ac-

tion brought by this appellant to recover $6,786.28, with interest from May 29, 1903, said amount being the difference between $12,236.66, the amount of the tax assessed against plaintiff (appellant here) for the year ending June 30, 1903, under the claimed authority of paragraph 5 of section 6 of the act of Congress approved July 1, 1902, chapter 1352 (32 Stats., 619), being 6 per centum of the amount of plaintiff's gross earnings for the year ending June 30, 1902, and $5,450.38, the sum admitted by plaintiff to be due by it as a tax under the provisions of said act of July 1, 1902, for the period from January 1 to June 30, 1903, being 6 per centum of plaintiff's gross earnings for the period from January 1 to June 30, 1902.

The defendant filed a plea of *non assumpsit* (R., 3), and, trial by jury having been waived and an agreed statement of facts having been filed, the cause was heard and decided by the court thereon, judgment being entered in plaintiff's favor for $1,525.33, with interest from May 29, 1903, and costs, under a stipulation (R., 13):

> "that if it be found by the court that the aforesaid tax of $12,236.66 was lawfully assessed against the plaintiff for the year ending June 30, 1903, and that the plaintiff is not entitled to recover for any part of said tax, paid by it as aforesaid, then and in that event plaintiff shall be entitled to judgment against defendant for the sum of fifteen hundred and twenty-five dollars and thirty-three cents ($1,525.33), paid by it to the defendant on the 11th day of November, 1902, for the second half of the taxes in lieu of personal taxes for the year ending December 31, 1902, and assessed under the provisions of the act of Congress approved October 1, 1890, chapter 1246."

The facts of the case are fully set forth in the stipulation (R., 4-13), and may be briefly summarized as follows:

The American Security and Trust Company is a corporation engaged in carrying on a safe-deposit, trust, loan, and mortgage business in the District of Columbia under the

authority and provisions of the act of Congress, approved October 1, 1890, chapter 1246, (26 Stats., 625), and has carried on such business under said act since November 17, 1890, pursuant to certificate filed with the Comptroller of the Currency under section 11 of the act.

Section 16 of the act of October 1, 1890, *supra,* provides that every company incorporated or operating under that act—

> "Shall annually, within twenty days after the first of January of each year, make a report to the Comptroller of the Currency, which shall be published in a newspaper in the District, which shall state the amount of capital and of the proportion actually paid, the amount of debts, *and the gross earnings for the year ending December thirty-first then next previous,* together with their expenses, which report shall be signed by the president and a majority of the directors or trustees, and shall be verified by the oath of the president, secretary, and at least three of the directors or trustees; *and said company shall pay to the District of Columbia, in lieu of personal taxes for each next ensuing year, one and a half per centum of its gross earnings for the preceding year, shown by said verified statement, which amount shall be payable to the collector of taxes at the times and in the manner that other taxes are payable.*"

Appellant, in accordance with the above provision of the act of October 1, 1890, annually made return of its gross earnings "for the year ending December 31, then next preceding," every year from 1891 to 1902, inclusive, and paid every year to the collector of taxes 1½ per cent. of the amount of its gross earnings for the preceding calendar year. Report was regularly made to the Comptroller of the Currency in January, 1902, and duly published, showing the amount of appellant's gross earnings for the year ending December 31, 1901, to be $203,377.06; and on May 22, 1902, appellant reported this amount to the Assessor of the District as basis of taxation for the year ending December 31, 1902. On May

29, 1902, appellant paid to the collector of taxes $1,525.33, being the first half of the tax for the year ending December 31, 1902—1½ per cent. of $203,377.06, gross earnings for the preceding calendar year; and on November 11, 1902, paid to the collector a like sum of $1,525.33, being the second half of said tax (R., 5, 8).

July 1, 1902, the President approved "An act making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and three, and for other purposes," chapter 1352, paragraph 5 of section 6 whereof (32 Stats., 619) provides as follows:

> "Par. 5. Each national bank as the trustee for its stockholders, through its president or cashier, and all other incorporated banks, and trust companies, in the District of Columbia, through their presidents or cashiers, and all gas, electric lighting, and telephone companies, through their proper officers, shall make affidavit to the board of personal-tax appraisers on or before the first day of August each year as to the amount of its or their gross earnings for the preceding year ending the thirtieth day of June, and shall pay to the collector of taxes of the District of Columbia per annum on such gross earnings as follows: Each national bank, and all other incorporated banks, and trust companies, respectively, six per centum; each gas company, five per centum; each electric lighting, and telephone company, four per centum. And in addition thereto, the real estate owned by each national or other incorporated bank, and each trust, gas, electric lighting and telephone company in the District of Columbia shall be taxed as other real estate in said District: *Provided,* That street railroad companies shall continue to pay the four per centum per annum on their gross receipts and other taxes as provided by existing law, and insurance companies shall continue to pay the one and one-half per centum on premium receipts, as provided by section six hundred and fifty of the Code of the District of Columbia. That so much of the act approved October first, eighteen hun-

> dred and ninety, entitled 'An act to provide for the incorporation of trust, loan, mortgage, and certain other corporations within the District of Columbia' as is inconsistent with the provisions of this section is hereby repealed."

After the passage of the act of July 1, 1902, *supra,* the Assessor of the District called upon appellant to make return of its gross earnings for the fiscal year ending June 30, 1902, as basis for taxation for the year beginning July 1, 1902, and ending June 30, 1903. Responsive to this demand, appellant made a statement to the assessor of the amount of its gross earnings for the year ending June 30, 1902, but at the same time made formal protest in writing (R., 5) against any assessment or taxation based upon its gross earnings for the period from July 1, 1901, to June 30, 1902, insisting that—

> "no assessment can or should lawfully be made or enforced against it based upon the gross earnings of said company between the period aforesaid, to wit, July 1, 1901, and June 30, 1902, because assessment has been heretofore made against said company, and under then existing law, based upon its gross earnings for the calendar year 1901, and hence including six months for the fiscal year commencing July 1, 1901, and ending June 30, 1902; the entire and indivisible tax due upon such assessment has been levied and partial payment thereof has been made in the time and manner required by law.
>
> * * * * * * *
>
> "Wherefore the said American Security and Trust Company denies that any lawful tax can or should be assessed against it under the act of Congress approved July 1, 1902, aforesaid, based upon the gross earnings of said company, for any period of time whatsoever preceding the first day of January, 1903, and hence protests against the making or enforcement thereof."

Upon this formal protest the Assessor of the District, under date of August 13, 1902, and in a communication addressed to the vice-president of the appellant company (R., 6) ruled that the company was liable for a tax for the year ending June 30, 1903, amounting to 6 per cent. of its gross earnings for the year ending June 30, 1902, saying (R., 7):

> "We shall be obliged to take the statement of the gross earnings of your company for the fiscal year 1902 as a basis for taxation for fiscal year 1903, and to charge upon the same 6 per cent., the whole of which tax will be due and payable in May, 1903."

From this ruling the appellant, under date of August 21, 1902, appealed to the board of personal tax appeals of the District of Columbia (R., 7, 8). The board of personal tax appeals referred the question raised by this protest and appeal to the corporation counsel of the District for his opinion, and on March 26, 1903, the corporation counsel rendered an opinion (R., 9, 10) to the effect that appellant was liable under the act of July 1, 1902, *supra,* for a tax for the year ending June 30, 1903, of 6 per cent. of the amount of its gross earnings for the year ending June 30, 1902. After reviewing the acts in question, the corporation counsel concludes his opinion as follows (R., 10):

> "I am, therefore, of opinion that the assessor properly ruled that the statement of the gross earnings of the company for the fiscal year 1902 was the proper basis for taxation for the fiscal year 1903, upon which the tax of six per centum was chargeable, the whole of which would be due and payable in May, 1903."

This opinion of the corporation counsel was approved by the board of personal tax appeals, appellant's protest and appeal overruled (R., 10), and a tax of $12,236.66 (6 per cent. of the amount of gross earnings for the year ending

June 30, 1902) was assessed and levied against appellant for the year ending June 30, 1903.

On May 29, 1903, appellant, under protest, and in order to avoid threatened distraint and levy and attachment thereunder, paid this tax of $12,236.66 assessed against it for the year ending June 30, 1903 (R., 11). This payment to the collector of taxes was made under a written stipulation signed by the Commissioners and the corporation counsel of the District of Columbia in behalf of the District and by appellant's attorneys in its behalf, and made part of the agreed statement of facts, in which it is recited (R., 11) that—

> "The premises considered, it is now hereby mutually understood, on behalf of the District of Columbia, and its governing officers, including the board of personal tax assessors and the collector of taxes, on the one hand, and the American Security and Trust Company upon the other, that payment of the tax exacted from said company under said return and of the official ruling thereon, shall be received by the collector of taxes for the District of Columbia from said company as tendered and paid under duress, and with as full legal effect in all respects and for all purposes as if so made after issuance of distress warrant, and to avoid levy or attachment thereunder, and as if made under full, sufficient and formal protest by said company."

The payment of this tax for the year ending June 30, 1903, was also accompanied by a formal protest addressed to the collector of taxes and signed by the president of the appellant company (R., 12, 13), concluding thus:

> "The amount of tax now assessed against the company under the act of July 1, 1902, for the fiscal year ending June 30, 1903, at six per cent. upon its gross earnings for the preceding fiscal year—July 1, 1901, to June 30, 1902, in amount $12,236.66, as above stated, is now tendered and paid by the Ameri-

> can Security and Trust Company, under protest, and to avoid threatened and impending levy and seizure of its property in satisfaction thereof, and with continued claim that for the year ending December 30, 1902, its payment of one-half of the tax imposed for such calendar year made in May, 1902, to wit, the sum of $1,525.33, and payment of like sum on November 14, 1902, as the remaining one-half of such tax for such calendar year 1902, should and did fully satisfy and discharge all and singular the liability of the company under the law for any and all personal taxes up to and including the calendar year ending December 31, 1902, and that for any period to said last-named date it was not and is not liable for any additional tax sought to be imposed upon it under the authority of the act of July 1, 1902."

Appellant's gross earnings for the period from July 1, 1901, to December 31, 1901, amounted to the sum of $113,-104.74 (R., 12). The tax assessed on the basis of these gross earnings, at the rate of 6 per cent. of the amount thereof, was $6,786.28. This sum ($6,786.28) is included in the total amount of $12,236.66 assessed against appellant as tax for the year ending June 30, 1903, and paid by it May 29, 1903. It is this sum of $6,786.28 which appellant claims was assessed against it without authority of law and which it now seeks to recover.

No. 1689.

The Union Trust Company sues on like basis to recover $2,065, the record (R. No. 1689, p. 3) stipulating that this case shall abide the judgment in No. 1688, the American Security and Trust Company case. The only other difference in the facts is that the Union Trust Company paid the *whole* of the tax on gross earnings for the calendar year 1901 in May, 1902, and the other appellant paid one-half of such tax in May, 1902, and the other half in November, 1902. In No. 1689 judgment was rendered for the Union Trust Company in the sum of $1,209.28, being the amount of tax paid under the act of 1890 and pursuant to the spirit of the stipulation in the American Security and Trust Company case (R., 13).

Assignment of Errors.

The court below erred in cause No. 1688:

I.

In not entering judgment in favor of appellant, The American Security and Trust Company, for the sum of $6,786.28, with interest from the 29th day of May, 1903.

II.

In holding that the tax, amounting to $12,236.66, levied and assessed against said appellant for the year ending June 30, 1903, was levied and assessed under authority of law, and that the amount of said tax was lawfully due from said appellant.

III.

In holding that said appellant could be lawfully assessed and liable for a tax for the period from July 1 to December

31, 1902, for which period appellant had paid, in whole or in part, a tax assessed and levied against it under then existing law.

IV.

In holding that said appellant could be lawfully assessed and liable under the act of July 1, 1902, for a tax on the amount of its gross earnings for the period from July 1 to December 31, 1901, it having already paid, in whole or in part, a tax on the amount of its gross earnings for said period assessed and levied against it under then existing law—*i. e.*, the act of November 1, 1890.

V.

In holding that it was the intent or meaning of paragraph 5 of section 6 of the act of Congress approved July 1, 1902, chapter 1352, or of any part or the whole of said act, to authorize the assessment and levy of a tax for the period from July 1 to December 31, 1902, against, and its collection from, the trust companies mentioned in said act, of 6 per centum of their gross earnings, or of any tax for said period; a tax of 1½ per centum of the amount of their gross earnings having been theretofore assessed and levied against, and in part collected from, said companies, under and by virtue of the authority of the act of Congress approved October 1, 1890, chapter 1246.

VI.

In holding that it was the intent or meaning of paragraph 5 of section 6 of the act of Congress approved July 1, 1902, chapter 1352, or of any part or the whole of said act, to authorize the assessment and levy against, and the collection from, the trust companies mentioned in said act of a tax of 6 per centum of the amount of their gross earnings for the period from July 1 to December 31, 1901, a tax of 1½ per centum of the amount of such gross earnings having

been theretofore assessed and levied against, and in part collected from, said companies, under and by virtue of the authority of the act of Congress approved October 1, 1890, chapter 1246.

VII.

In not allowing interest from November 11, 1902, on the sum of $1,525.33, for which judgment was entered in said appellant's favor, the said sum of $1,525.33 having been paid by appellant on November 11, 1902.

The court below erred in cause No. 1689:

I.

In not entering judgment in favor of appellant, The Union Trust Company, for the sum of $2,065, with interest from the 29th day of May, 1903.

II.

In holding that the tax, amounting to $4,162.99, levied and assessed against said appellant for the year ending June 30, 1903, was levied and assessed under authority of law, and that the amount of said tax was lawfully due from said appellant.

III.

In holding that said appellant could be lawfully assessed and liable for a tax for the period from July 1 to December 31, 1902, for which period appellant had paid a tax assessed and levied against it under then existing law.

IV.

In holding that said appellant could be lawfully assessed and liable under the act of July 1, 1902, for a tax on the amount of its gross earnings for the period from July 1 to

December 31, 1901, it having already paid, in whole or in part, a tax on the amount of its gross earnings for said period, assessed and levied against it under then existing law—*i. e.*, the act of November 1, 1890.

V.

In holding that it was the intent or meaning of paragraph 5 of section 6 of the act of Congress approved July 1, 1902, chapter 1352, or any part or the whole of said act, to authorize the assessment and levy of a tax for the period from July 1 to December 31, 1902, against, and its collection from, the trust companies mentioned in said act, of 6 per centum of their gross earnings, or of any tax for said period; a tax of 1½ per centum of the amount of their gross earnings having been theretofore assessed and levied against, and in part collected from, said companies, under and by virtue of the authority of the act of Congress approved October 1, 1890, chapter 1246.

VI.

In holding that it was the intent or meaning of paragraph 5 of section 6 of the act of Congress approved July 1, 1902, chapter 1352, or any part or the whole of said act, to authorize the assessment and levy against, and the collection from, the trust companies mentioned in said act of a tax of 6 per centum of the amount of their gross earnings for the period from July 1 to December 31, 1901, a tax of 1½ per centum of the amount of such gross earnings having been theretofore assessed and levied against, and in part collected from, said companies, under and by virtue of the authority of the act of Congress approved October 1, 1890, chapter 1246.

ARGUMENT.

The Trust Companies Act of October 1, 1890.

The act of October 1, 1890, *supra,* as respects taxation of the companies incorporated or existing thereunder, requires (*a*) that such companies shall, within twenty days after January 1 of each year, make annual report to the Comptroller of the Currency, stating the amount of their "gross earnings for the year ending December thirty-first then next previous;" and (*b*) that they shall "pay to the District of Columbia, in lieu of personal taxes for each next ensuing year one and one-half per centum of gross earnings for the preceding year shown by said verified statement, which amounts shall be payable to the collector of taxes at the times and in the manner that other taxes are payable."

A

The trust companies became liable for a sum certain, immediately upon rendering report of gross earnings to the Comptroller of the Currency.

Subject possibly to the implied power of the tax officials of the District to question the correctness of the trust companies' statements of their gross earnings, the assessment of the tax became complete when the amount of such gross earnings was reported to the Comptroller in the sworn report required by the statute. The amount of the tax—1½ per cent. of the amount of such gross earnings—was then definitely fixed and liability therefor at once attached. Whether a company taxable under the act continued in business during the entire calendar year, or whether it went out of business before the tax became payable in May, would make no difference as to its liability for the tax—in either case the company became

liable for the amount of the entire tax. This is clear upon the authority of *Savings Bank v. United States,* 19 Wall., 227. That case was an action of debt brought by the United States to recover a tax of 5 per cent. imposed by the act of June 30, 1864 (14 Stats., 138) on undistributed earnings of a bank. The act in question required a verified return to be made to the Commissioner of Internal Revenue. Error was assigned in holding that the action of debt was maintainable, it being contended that the tax had not been assessed and was hence not a sum certain. As to this, the Supreme Court, by Mr. Justice Strong, said (p. 240):

> "Nor is there anything in the objection that the taxes for which judgment has been recovered in this case had not been assessed. No other assessment than that made by the statute was necessary to determine the extent of the bank's liability. An assessment is only determining the value of the thing taxed, and the amount of the tax required of each individual. It may be made by designated officers or by the law itself. In the present case the statute required every savings bank to pay a tax of five per cent. on all undistributed earnings made, or added during the year to their contingent funds. There was no occasion or room for any other assessment. This was a charge of a certain sum upon the bank, and without more it made the bank a debtor."
>
> Affirmed in *King v. United States,* 99 U. S., 229, 233.

So, under the act of October 1, 1890, the law itself made the assessment. As soon as a company operating under that act made return of its gross earnings for the preceding year, the amount of the tax was definitely ascertainable, and became conclusively fixed as against such company for such sum certain. The liability for such sum immediately attached and could not thereafter be avoided.

Indeed, the liability for the tax would have attached without any return of gross earnings upon the part of the trust

company. The amount of such gross earnings is a sum capable of definite ascertainment, and liability for a tax of 1½ per cent. of the amount thereof attached immediately upon the close of the calendar year in which the earnings were made. This has been repeatedly ruled by the Federal courts in many similar cases under the internal-revenue laws, holding that assessment, in the sense of any definite act upon the part of either the officials of the Government or the person charged with the tax, was not a condition precedent to the right to collect the tax, and that action for debt could be maintained therefor by the Government and judgment recovered upon proof of the facts necessary to fix the amount of the tax.

United States v. Reading R. R. Co., 123 U. S., 113 114.

United States v. Tilden, 9 Ben., 380, 385; Fed. Case No. 16519.

United States v. Halloran, 14 Blatchf., 3, 4; Fed. Case No. 15286.

United States v. Chase, 22 Int. Rev. Rec., 10; Fed. Case No. 14788.

United States v. Little Miami, &c., R. R. Co., 1 Fed. Rep., 700, 701.

Folsom v. United States, 21 Fed. Rep., 37.

United States v. Warrick, 25 Fed. Rep., 138.

Spreckels Sugar-Refining Co. v. McClain, Collector, 109 Fed. Rep., 76, 78.

In *United States v. Tilden, supra,* an action of debt for recovery of unpaid taxes on income, under the income tax laws of August 5, 1861, and June 30, 1864, the court (Blatchford, J.) discusses the question at some length, saying (28 Fed. Rep., 166):

> "The tax is not imposed by any officer or by any of the machinery or methods organized by the statute. The statute itself declares, in each case, that a

> tax of a fixed specified percentage shall be levied, collected and paid on a specified object of taxation. * * * The liability of the individual for income tax is determinable by ascertaining what in fact was the amount of his income during the year, according to the definition given in the statute itself, and including and deducting just what the statute allows and requires to be included and deducted, and calculating the tax thereon at the rate of five per centum or seven and a half per centum, or ten per centum, according to the amount of income so arrived at. The extent of the liability of the individual for income tax is defined by the statute. * * * In the case of a suit for income tax, the books and accounts of the individual, and his testimony, and perhaps other means of information, may and must be resorted to. * * * *The statute, in imposing the per centum of tax on the income of the individual, makes a charge on him of a sum which is certain for the purposes of an action of debt, because it can be made certain through the action of a judicial tribunal, by following the rules laid down in the statute.*"

The same rule is laid down in *Belvidere v. Warren R. R. Co.*, 34 N. J. Law, 193. The syllabus thus states the case:

> "1. A statute authorizing the laying of a tax was repealed after an assessment of such tax, but before its collection; *held*, that the repeal did not prevent the collection of such tax, such collection being regulated by the general tax law, which remained unrepealed.
>
> "2. The same statute imposed a penalty of 12 per cent. on failure to pay tax assessed; *held*, that such penalty could not be collected after the repeal of the statute, the rule being that the assessment of the tax was a thing passed and completed, and could not be affected by the repeal, *contra* with respect to the penal percentage.
>
> "3. When a statute is repealed it must be considered as though it had never existed, except with respect to transactions passed and closed."

In its decision the court, by Beasley, C. J., said (p. 195):

> "The writ commands the defendants to pay a cer-
> "tain tax, which it is alleged was assessed by the
> "assessor of the town of Belvidere, and also 12 per
> "cent. on such tax from the time it fell due. The
> "defendants call in question, 1st, the legality of the
> "tax itself, and failing in this, in the 2d place they
> "deny their liability to pay the interest."
>
> "First, then, with regard to the body of the tax."
>
> "It appears from the writ that this assessment was
> "made and for the year 1865, by virtue of the act of
> "the legislature approved 28th of March, 1862
> "(Pamph. Laws, 344). It is a tax on the capital stock
> "of the defendants and the ground of objection now
> "interposed is that the act authorizing it to be laid has
> "been repealed (*Nix. Dig.*, 957, § 32). In support of
> "this position, the general legal rule, as found in
> "Dewar. on Stat., 676, is referred to, viz., 'that where
> "'an act of Parliament is repealed, it must be con-
> "'sidered (except as to transactions passed and closed)
> "'as if it had never existed.' But even if we accept
> "this definition as strictly correct in its application to
> "every case, still it is not perceived how, by force of
> "it, the present tax is to be avoided. The case seems
> "to fall within the exception contained in the rule
> "as just quoted. The *assessment of the tax closed and*
> "*ended the transaction,* so far as the act of 1862 was
> "concerned. That act authorized the assessment, and
> "appointed the mode of making it, but it had noth-
> "ing to do with its collection, which was and is alto-
> "gether regulated by other acts. When, therefore,
> "this assessment was made, the force of the act of
> "1862 was, with respect to it, wholly spent and ex-
> "hausted; the thing authorized to be done was com-
> "pletely done, *and the consequence is, that even on*
> "*the most stringent application of the rule as*
> "*claimed, a repeal of the statute cannot invalidate a*
> "*proceeding that was fully perfected while such stat-*
> "*ute continued in force.*"

That exemption does not operate under an act passed *subsequent* to the assessment is well ruled in *People ex rel.*

R. R. Co. v. Tax Commissioners, 91 N. Y., 593. The syllabus thereof thus states the decided case:

> "The statutes in relation to the assessment of taxes in the city and county of New York (chap. 302, Laws of 1859; § 4, chap. 410, Laws of 1867; § 112, chap. 335, Laws of 1873) confer no power upon the commissioners of taxes and assessments to change the record of assessments after the first day of June in any year.
>
> "It *seems* that none of the municipal authorities have any judicial duty to perform after that date in relation to the assessment of property or the collection of taxes, save the board of supervisors, and they only when it appears "under oath or affirmation that the party aggrieved was unable to attend within the period prescribed for the correction of taxes by reason of sickness or absence from the city" (§ 10, chap. 302, Laws of 1859).
>
> "As, therefore, the act of 1880 (chap. 542, Laws of 1880), providing for the taxation of certain corporations, companies, and associations, was not passed until June 1 of that year, and as it contains no provisions giving it a retroactive effect, or providing for the contingency, it imposed no duty upon said commissioners, so far as the assessment and collection of taxes for that year were concerned.
>
> "The provision of the act of 1880 (§ 1, chap. 269, Laws of 1880) in regard to the review and correction of assessments by *certiorari* confers upon the court the power of review and correction only when it appears by the return to the writ or the evidence taken thereunder, 'that the assessment complained of is illegal, erroneous, or unequal.' It does not authorize a review where it appears that the assessment in question was made in accordance with the statutes then in force, and in the due performance of the duty then obligatory upon the assessors.
>
> "Where, therefore, it appeared by the return to a writ of *certiorari* to review an assessment upon the personal property of the relator, which was alleged to be illegal because of the exemption contained in the act of 1880 (chap. 542, Laws of 1880), that the

assessment was made before May 1, 1880, in accordance with the then existing law; *held,* that the assessment was properly affirmed."

Thereunder the court said (p. 604):

"No claim is made on behalf of the relator that "this assessment is erroneous or unequal in such a "sense as to authorize the court to order a re-assess- "ment, but the claim is that the assessment was alto- "gether illegal on account of the exemption contained "in the act of 1880, and that it was their duty to "strike it from the assessment-roll on the passage of "that act. This claim we have seen cannot be sup- "ported for the reason that the assessment as origi- "nally made was authorized by law and they had no "power, and it was therefore no part of their duty, "to correct the assessment after May 1st."

* * * * * * *

"The act must be construed to have a prospective "operation, and to become operative and binding "upon the officers having charge of the duty of as- "sessing and levying taxes only when the occasion "for its exercise arises and when they are charged "with the performance of some prospective official "duty in relation thereto."

Thus the tax of 1½ per cent. of gross earnings for the calendar year 1901 became a fixed libility of every company operating under the act of October 1, 1890, *supra.* After the commencement of the calendar year 1902, and before the passage of the act of July 1, 1902, that liability had been discharged in whole or in part by the companies charged therewith.

Even if the liability for this tax had not been discharged by payment before the passage of the act of July 1, 1902, that act did not operate to relieve from such liability. Section 4 of the act of February 25, 1871, chapter 71 (16 Stats., 432), embodied in section 13 of the Revised Statutes of the United States, provides that—

> "The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or *liability* incurred under such statute, *unless the repealing act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability.*"
>
> *United States v. Keokuk, &c., Bridge Co.*, 45 Fed. Rep., 178, 188.

There is no provision in the act of July 1, 1902, for the release or extinguishment of any liability incurred under the act of October 1, 1890, or any other statute. Hence, as to any liability under the act of October 1, 1890, for taxes for the calendar year 1902, which had not been discharged before July 1, 1902, the act approved on that day did not operate to release or extinguish the same, and liability therefor can still be enforced. As to moneys paid in the discharge of such tax liability, there could of course be no recovery nor indemnification.

B

It is immaterial for the purposes of this case whether the whole tax assessed against appellants for the year ending December 31, 1902, was paid in May, 1902, or whether said tax was paid in two equal installments, in May and November, 1902, respectively.

The District of Columbia revenue act of April 3, 1878, chapter 48 (20 Stats., 34, 35), in section 3 provided that—

> "One-half the tax levied upon real and personal property shall become due and payable on the first day of November next succeeding the completion of the assessment, and the other half of such tax shall become due and payable on the first day of May next following."

This method of paying taxes in two installments continued in force under the passage of the act of June 6, 1900, chapter 808 (31 Stats., 665), which provided that—

> "For the fiscal year commencing July first, 1900, the whole tax on real and personal property in the District of Columbia shall be due and payable in the month of May, 1901."

It was, however, further provided by this act that—

> "For the fiscal year beginning July first, 1901, and thereafter, taxes on real and personal property may be paid in two equal installments, as is now provided by law."

This latter provision of the act of June 6, 1900, governed the payment and collection of taxes on real and personal property in the District in May, 1902. The trust companies act of October 1, 1890, *supra,* under which the tax for the year ending December 31, 1902, was assessed, expressly provides that the tax thereby imposed "shall be payable to the collector of taxes at the times and in the manner that other taxes are payable." Hence at the time of the payment of this tax for the calendar year 1902, as was the case during all the time since the passage of the trust companies act of October 1, 1890, with the possible exception of the tax for the calendar year 1900, the tax of 1½ per cent. of the amount of gross earnings for the preceding calendar year was due and payable in two equal installments, the first in May, and the second in November, although the tax could, at the payee's option, be paid in whole in the month of May. This method of payment of taxes in two installments did not, however, divide the tax so paid into two separate taxes, each covering a period of six months. The division into two parts simply related to the time of payment of the tax—not to the tax itself. The tax was assessed as a whole "in lieu of personal taxes for each next ensuing year" and was paid as the tax

for whole year. The 1½ per cent. tax for the calendar year 1902 became due and payable in May, 1902, either in one or two installments, at the payee's option. Some trust companies—*e. g.*, the Union Trust and Storage Company (R., 11)—paid the whole of the tax for the calendar year 1902 in May of that year. In legal *status* of the taxpayer, however, it can make no difference whether the whole tax was thus paid in May or whether, as in the case at bar, the first half of the tax was paid in May and the second half of the tax in November. In either case the tax was an entirety, and was paid as an entire tax, whether payment thereof was made in one installment or in two. The payment made in May, 1902, was not for the first six months of that calendar year, but was, in fact and law, payment of one-half of the *entire tax* imposed for the *entire* calendar year as assessed by the act of 1890.

II.

UNDER THESE PLAIN CONDITIONS THE ACT OF JULY 1, 1902, COULD ONLY OPERATE IN FUTURE—I. E., AFTER THE CLOSE OF THE CALENDAR YEAR 1902—IN RESPECT OF THESE COMPANIES.

As above shown, the act of October 1, 1890, in plain terms required return of gross earnings for each calendar year, and in equally plain terms imposed a tax of 1½ per cent. thereon *"for each next ensuing* [calendar] *year."* The return had been made; the entire tax covering the period to December 31, 1902, had been imposed by the law, and liability therefor had completely attached. In one case the tax had been paid in whole; in the other case half the *entire* tax had been paid; but, as above shown, the legal effect in either case was precisely the same. The *entire* tax of 1½ per cent. of the gross earnings for the preceding year had become due and could only be discharged by payment in

full. No release of liability for an unpaid half thereof can be construed from the act of July 1, 1902, nor any other statute. Section 13, United States Revised Statutes, is plain to this effect. How, then, can it be held that these companies must *again* make return of gross earnings for the same period from July 1 to December 31, 1901, and must thereon pay a *second* tax, quadrupled in amount, for the identical period—July 1 to December 31, 1902—for which they had already paid. Such interpretation would, we submit, make the statute violative of the fundamental principles of just legislation.

A.

The Act of July 1, 1902, is Not Retroactive.

In the interpretation of statutes no general principle is better established than that a law is not to be given a retroactive effect, so as to impose a new burden, unless its terms are "so clear, strong, and imperative that no other meaning can be annexed to them."

> "As retrospective laws are generally unjust and in many cases oppressive, they are not looked upon with favor. Statutes not remedial will, therefore, not be construed to operate retrospectively, even when they are not obnoxious to any constitutional objection, unless the intent that they shall do so is plainly expressed or made to appear." "A statute should not receive such construction as to make it impair existing rights, *create new obligations, impose new duties in respect of past transactions,* unless such plainly appear to be the intention of the legislature."
>
> Sutherland on Statutory Construction, Secs. 463, 464, and cases cited.
>
> See, also, Endlich on Interpretation of Statutes, Secs. 271-279.

In *Chew Heong v. United States,* 112 U. S., 536, 559, the Supreme Court said:

> "In *United States v. Heth,* 3 Cranch, 398, 413, this " court said that 'words in a statute ought not to have " 'a retrospective operation unless they are so clear, " 'strong and imperative that no other meaning can " 'be annexed to them, or unless the intention of the " 'legislature cannot be otherwise satisfied;' and such " is the settled doctrine of this court (*Murray v. Gib-* " *son,* 15 How., 421, 423; *McEwen v. Den,* 24 How., " 242, 244; *Harvey v. Tyler,* 2 Wall., 328, 347; *Sohn* " *v. Waterson,* 17 Wall., 596, 599; *Twenty Per Cent.* " *Cases,* 20 Wall., 179, 187)."

The act of July 1, 1902, imposing personal taxes, *generally* dealt in terms with the *fiscal* year then next ensuing. The dominant intent of Congress was to impose new taxation and upon new subjects of taxation for the next ensuing fiscal year and for succeeding fiscal years. The entire act was intended to have future operation, and the repeal of the former act of 1890 in respect of taxation of trust companies was in terms limited to such part of the former act of 1890 "as is inconsistent with the provisions of this section."

But the provisions of the former act of 1890 had been *enforced* as existing law against these appellants before the passage of the act of July 1, 1902. Under the former act the return of the company giving its gross earnings for the calendar year 1901 had been made; the former act of 1890 had by its own terms imposed the assessment of 1½ per cent. tax thereon for the "next ensuing year," and in one case all and in the other one-half of such entire tax had been paid at the time prescribed by law. The intent to reopen the closed transactions had under the former law cannot be imputed to Congress. Under such circumstances, "the intention of the legislature" can "be otherwise satisfied" (Chew Heong *v.* U. S., *supra*), by giving to the act of 1902 the full operation which can lawfully and properly be given thereto, to

wit, *by assessment and payment thereunder for that portion of the fiscal year 1902–1903 not covered by the operation and effect of the act of 1890.*

B.

It Was Not the Intent of Congress to Impose a Double Tax.

Fqually well established with the presumption against retrospective legislation is the rule in the construction of tax laws that double taxation is not to be presumed.

> "It has very properly and justly been held that a construction of tax laws was not to be adopted that would subject the same property to be twice charged for the same tax, unless it was required by the express words of the statute, or by necessary implication. *It is a fundamental maxim in taxation that the same property shall not be subject to a double tax payable by the same party, either directly or indirectly* and when it is once decided that any kind or class of property is liable to be taxed under one provision of the statutes, it has been held to follow, as a legal conclusion, that the legislature could not have intended that the same property should be subject to another tax, though there may be general words in the law which would seem to imply that it may be taxed a second time. This is a sound and very just rule of construction, and it has been applied in many cases where, at first reading of the law, a double taxation might seem to have been intended."
>
> Cooley on Taxation (3d ed.), vol. 1, pp. 398-400, and cases cited.

"It is a rule of construction repeatedly recognized by the courts in taxation cases that double taxation will not be presumed to have been intended, and will only be enforced under express mandate."

Judson on Taxation, Sec. 425.

"The courts always frown upon double taxation, and even in those jurisdictions where the legislature

> is held to have power to impose it, such a construction will be given to the statutes as to avoid double taxes, if possible. A purpose to impose double taxes will not be presumed, and to produce such effect the legislative intent must be clear and unmistakable."
>
> Am. and Eng. Enc. of Law (2d ed.), vol. 27, p. 608, and cases cited.

As said by the Supreme Court of the United States in the case of *Tennessee v. Whitworth,* 117 U. S., 129, 137:

> "Double taxation is never to be presumed. Justice requires that the burdens of government shall as far as practicable be laid equally on all, and if property is taxed once in one way, it would ordinarily be wrong to tax it again in another way, when the burden of both taxes falls on the same person. Sometimes tax laws have that effect; but if they do, it is because the legislature has unmistakably so enacted. All presumptions are against such an imposition."

C.

While, as indicated by the authorities *supra,* it sometimes happens that the same property is taxed once in one way and again in another way, and thus bears the burden of taxation twice, we know of no case where tax statutes have been construed to twice tax the *same person,* for the *same property,* in the *same way,* for the *same period.* That is, however, precisely the effect given to the act of July 1, 1902, by the court below. Appellants are, under the construction complained of, twice taxed on the same gross earnings, for the same period—July 1 to December 31, 1902—and in the same way. It cannot be presumed that Congress thus intended to exact a double burden from this particular class of taxpayers—to force them to pay a second time and at an enhanced rate personal taxes for the period from July 1 to December 31, 1902, for which they *then* held tax receipt showing due payment and discharge. The gros

injustice of such construction is conceded on the part of the District by the stipulation in No. 1688 (R., 13), that in the event the full tax of $12,236.66 be held to have been lawfully assessed under the act of July 1, 1902, plaintiff shall be entitled to judgment for $1,525.33—the second half of taxes paid under the act of 1890. Yet the act of July 1, 1902, recognized no release of liability for any part of the tax then assessed and due, and the sound interpretation of the *new* tax provision is that it was not to operate until the expiration of the period for which personal taxes had then been assessed and paid.

The case of *Commonwealth v. Lehigh V. R. R. Co.*, 129 Pa. St., 435, is exactly analogous to the case at bar. One of the questions at issue there was whether the act of June 30, 1885, section 4 (P. L., 193), and which in terms took effect on passage, operated from that date to charge corporate securities with a tax for the ensuing *fiscal* year, when those securities had already been subjected to taxation under general law for the current *calendar* year.

The company's exception in this regard to the auditor's settlement is thus stated (p. 434):

> "In not finding as a conclusion of law that the "three-mills tax imposed by the act of June 30, 1885, "did not apply to any portion of the calendar year "1885, for which year a four-mills tax under the act "of 1881 had been assessed and collected prior to the "passage of the said act of 1885."

In sustaining this exception the lower court in its opinion (p. 438) observed:

> "In *Commonwealth v. Lehigh Valley R. Co.*, 104 "Pa., 89, Justice Clark said: 'We incline to the opin-"'ion, that the first tax of four mills, under the act of "'1879, would be for the year 1880, and the second "'for the year 1881; that as the act of 1881 was "'passed June 10th, after the taxes of that year had "'accrued, the collection of which was expressly re-

> " ' served, the report made in November of that year
> " ' was intended as a basis of exemption from other
> " ' taxation for the ensuing year. Thus the period of
> " ' default falls within the time of effecting the local
> " ' assessment.' In accordance with this view, we
> " think that the first three-mills tax under the act of
> " 1885 would begin to accrue on and after January 1,
> " 1886, and before June 30, the date of its passage, the
> " assessment of 1885 would have been already made,
> " and the collection of these is expressly reserved in
> " the act."

This ruling was affirmed by the Supreme Court (p. 447). That this conclusion did not in anywise depend upon the fact that the act of 1885 expressly reserved the payment under assessment made prior to its passage is clear from the Supreme Court's declaration (p. 448) that—

"The obligation to pay the tax arises out of the assessment," and that no change of ownership in the bonds (the subject of assessment) by passing into the hands of a non-resident of the State after such assessment could relieve that obligation. This is in harmony with the rule of law fully established *supra,* that assessment determines the tax obligation, and for the period declared by the statute under which the assessment is made.

Again, the Supreme Court in the same case ruled (p. 449):

> "Where an act is required to be done annually and
> " no day is designated, either in express words or by
> " implication for the beginning of the year, it will or-
> " dinarily be presumed that the calendar year is in-
> " tended."

After citing the previous tax laws of the State, the opinion adds:

> " For thirty years or more, therefore, the taxes upon
> " capital stock have been rated and imposed accord-
> " ing to the amount of dividends made within a fiscal
> " year, ending on the first Monday of November, but
> " no such thing is found in the act of 1885, nor is

> " there anything in the act from which any implica-
> " tion could arise that any other than the calendar
> " year was intended."

So here and for many years the taxes upon real and personal property in the District of Columbia covered the fiscal year extending from July 1 to June 30. In face of that long-continued provision Congress, by section 16 of the act of October 1, 1890, *in express terms* made the tax upon trust companies cover in return assessment and payment the *calendar* year. Hence to the *calendar* year alone does the transaction in all its legal bearings relate.

In the case just cited the auditor general of the State made statement of settlement with the company as under the act of 1885 "for the year ending first Monday of November, 1886," * * *

Commenting thereon, the court said (p. 450):

> " In this he was certainly mistaken, but the tax was
> " not settled until it was due for the calendar year;
> " it was settled at the proper time and for the period
> " and amount which the company was under legal
> " obligation to pay; it was settled under authority of
> " and by express reference to the act of June 30, 1885,
> " and upon the basis of the report made on the first
> " Monday of November. The statement that it was
> " for the year ending the first Monday of November
> " was but a clerical blunder, which was open to cor-
> " rection and amendment, * * * the words 'end-
> " 'ing first Monday of November' were mere surplus-
> " age and should have been stricken from the record."

The decision of this court in *Bush v. District of Columbia,* 1 D. C. App., 1, is, it seems to us, absolutely controlling here. The question involved in that case was whether the *license* provision of the act of March 3, 1893, Ch. 204 (27 Stats., 563), regulating the sale of intoxicating liquors in the District of Columbia, went into immediate effect, or whether its operation was postponed until the expiration of the current

> " ' served, the report made in November of that year
> " ' was intended as a basis of exemption from other
> " ' taxation for the ensuing year. Thus the period of
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license year. When the act of 1893 was passed the sale of liquors was licensed under the act of the District legislature of August 23, 1871. Bush had taken out his license under this act, which did not expire until November 1, 1893. Before the expiration of the term of this license, but after the passage of the act of March 3, 1893, Bush was arrested for selling liquor without a license. He was convicted, the court below holding that the license provisions of the act of 1893 took immediate effect. On appeal this court held that the license provision of the act of 1893 did not operate immediately, notwithstanding that section 21 of that act in terms repealed all laws or parts of laws inconsistent therewith. Mr. Justice Shepard, delivering the opinion of the court, said (p. 7):

> "The repealing clause of the act of March 3, 1893, reads as follows:
>
> " 'SEC. 21. That this act shall be in lieu of and as a substitute for all existing laws and regulations in the District of Columbia in relation to the sale of distilled and fermented liquors in the said District, and that all laws or parts of laws inconsistent with this act, except such laws as are applicable to the sale of liquor within one mile of the Soldiers' Home, be, and they are hereby repealed.'
>
> "The language of this clause is peculiar, and renders it apparent that Congress intended this act as a complete substitute for all other laws and regulations upon the subject, and that thereafter all licenses should be taken out and all prosecutions maintained under its provisions alone.
>
> "At the same time, it may be said that the general policy of the new law is not different to that of the old; it has not in view the suppression of the sale of liquor, any more than the old; but simply provides more stringent regulations in the interest of law and decency, as well as a considerable increase in the revenue to be derived therefrom.
>
> "The new statute makes no provision whatever by its terms with respect to the unexpired licenses issued under the old law, and contains no reference to

them unless it may be found in the 17th section, which reads as follows:

"'SEC. 17. That all applicants who have had a license during the preceding year shall apply for a renewal of such license on or before November first of each license year, and shall be permitted to continue business until license shall be granted or refused by the excise board; but in all cases of refusal to grant license such proportion of the license fee as may have become due shall be deducted and retained from the sum deposited therefor as the time from the first day of November to the date of such refusal bears to the entire license year, and no other person shall be permitted to conduct said business until a license is issued therefor.'

"It is contended on behalf of the plaintiff in error that this section refers to the license year as created by the old law (which is in force still as to some other occupations), and expressly recognizes the liquor licenses thereunder as continuing in force until November 1, 1893.

"In the view that we have taken of the case, it is not necessary to decide this question, and this section is only considered in arriving at the intention of Congress as contained in the whole act.

"In construing a statute, its subject-matter, reason and effect must all be looked to, and if its words, taken literally, bear an unreasonable signification, there may be some deviation from the ordinary sense, unless it be plain that such signification only was intended.

"While it is not within the judicial power, by construction, to cure defects which may render laws unjust or even oppressive, if they clearly exist; yet no statute should be so construed as to render it unreasonable, or unjust in its operation, if there be room for construction at all.

"Then, in the absence of any expressed intention to abrogate all licenses issued under the old law, and in the light of the subject-matter, reason and spirit of the new law, taken in connection also with the ambiguous language of the 17th section and certain expressions in other parts of the act, we cannot find

> that Congress deliberately intended by the mere repeal of the old law, to destroy all privileges under it, and take from the owners thereof, not only the right to do business under licenses for which they had paid in good faith, but also to confiscate their value for the unexpired term."

The act of March 3, 1893, just as the act of July 1, 1902, here in question, by its terms took effect when passed. That act, like this, imposed a liability, and like this, that act repealed all inconsistent acts. The cases are thus precisely similar, with this exception, that the act of 1893 was an exercise of the police power, while the provisions of the act of 1902, here in question, are in exercise of the revenue or taxing power solely. Under the police power, it is conceded that a license may be immediately revocable, although such revocation is not to be presumed. The tax here in question, whether treated as a tax on personal property or a personal tax in the nature of an occupation tax, is, however, upon ar entirely different plane. The tax is a revenue tax, pure and simple; there is no element in it of the license tax levied under the police power.

The act of 1890 and the formation of these appellant companies thereunder created a legislative contract between the sovereign and the corporation.

Dartmouth College v. Woodward, 4 Wheat., 519.

The language of that contract in respect of the vital matter of taxation is neither obscure nor doubtful. The rate, the period of taxation, and the mode for ascertainment of the amount of tax to be levied and paid in and for each calendar year are all plainly expressed. The reserved power of alteration and amendment operates only from the point of time and upon the subject-matter which has not been covered by the act at the time of such amendment. What has become fixed and determined by the former provision of the act remains in that status. What has not been thus

effected becomes subject to the amended law. A *repeal* of the tax imposed by the act of 1890 could operate only for the next succeeding year, when the assessment has been made, the tax determined, and payment made prior to such repeal. Amendment can have no other or further operation.

Repeal or amendment equally involves a *change* in the existing law. What has been *done* under the former law is hence beyond the legal effect of repeal or amendment. As ruled in *Belvidere v. Warren R. R. Co.,* 34 N. J. Law, 193, *supra,* repeal *after* assessment does not relieve from payment of the tax thereunder, and, as ruled in *People ex rel. R. R. Co. v. Tax Commissioners,* 91 N. Y., 593, *supra,* an exempting statute passed *subsequent* to the assessment likewise does not relieve from payment of the tax under such assessment. Applying these settled principles to the case at bar and it is manifest that as neither repeal nor exemption by legislation can or will affect a *prior* assessment and tax levied under the former law, an attempted increase in taxation under like conditions cannot be operative except *in futuro* and after the full effect of the prior legislation has expired.

The act of July 1, 1902, enacted an entirely new system of taxation for this District. It was a general act, dealing with a hundred or more different subjects and objects of taxation. The paragraph in question imposes taxes on national banks, other incorporated banks, gas companies, electric lighting companies, and telephone companies, as well as on trust companies. In general legislation of this character it not infrequently happens that words may be used as respects some class or object of taxation which, if strictly and narrowly construed, would impose a double burden and work grave injustice. As pointed out, however, by this court in *Bush v. The District,* such legislation must be construed with respect to its general purpose. The general purpose of the statute is clear that trust companies, like national and other banks, should *in future* pay a tax of 6 per cent. of the amount of their gross earnings, and that *thereafter* the tax-

ing provisions of the Trust Companies Act of 1890 should not interfere with the general scheme. The national and other banks named in the paragraph had theretofore paid no tax on earnings, and in harmony with the general system taxes were imposed as of the *fiscal* year. It was proper, therefore, to use words of immediate import in imposing this tax; but to construe the clause repealing the act of 1890 in a retrospective sense, thus imposing an increased burden on these trust companies, who had already paid their taxes for the *calendar* year, and for the same period, would be clearly against the legislative intent as well as manifestly unjust.

D.

Any Doubt as to the Meaning of the Act Should be Resolved in Favor of the Taxpayer.

For the reasons above stated and under the foregoing authorities, the intent of Congress to defer the operation of the tax imposed until the expiration of the current tax period with the close of the calendar year, is, we submit, manifest beyond doubt. Should any doubt remain, however, in the mind of the court, that doubt should be resolved in appellant's favor. As tersely said by Chief Baron Pollock:

> "A tax cannot be imposed without clear and ex-
> " press words for that purpose."
> 11 *Exchequer,* 191.

This language was quoted with approval by the United States Supreme Court in *United States v. Isham,* 17 Wall., 496, 504.

So in *Hartranft v. Wiegmann,* 121 U. S., 600, 616, the same court said:

> " We are of opinion that the decision of the circuit
> " court was correct. But if the question were one of
> " doubt, the doubt would be resolved in favor of the

"importer 'as duties are never imposed on the citizen
"'upon vague or doubtful interpretations.' *Powers v.*
"*Barney,* 5 Blatchford, 202; *United States v. Isham,*
"17 Wall., 496, 504; *Gurr v. Scudds,* 11 Exch., 190,
"191; *Adams v. Bancroft,* 3 Sumner, 384."

III.

No Conflict with the Case of Glass v. The District.

This case is widely different from the case of *Glass et al. v. District of Columbia,* recently decided in this court. *There* the basis and period of assessment remained unchanged, to wit, the fiscal year. No tax was due when Congress repealed the former law imposing tax of 4 per cent. and provided that the law in that respect should read as follows, namely, 2 per cent. It was argued for the building association, and the court sustained the contention, that the new law took effect from its date, having no retroactive effect, and made the tax *thereafter* due but 2 per cent., because when such tax fell due the new law was the *only* law in existence upon the subject.

But here the old law of 1890 had fixed the assessment basis (*i. e.,* the gross earnings for the calendar year 1901), had by force of the statute imposed the tax for the *entire* calendar year 1902, and in one case all and in the other one-half of that tax had been paid, leaving the other half due in November, 1902. The difference is hence obvious. The new law of 1902 could not operate over any part of that year without displacing the former law, the act of 1890. Unless the act of 1902 be thus given retroactive effect, it could not repeal the act of 1890 in its application for the entire calendar year 1901. The words of repeal in the act of 1902, "inconsistent," &c., would have future effect. Had they such retroactive effect? The presumption of law is against such retroactive effect unless *clearly* expressed.

A. The old law of 1890 took the whole calendar year 1901 as the basis of assessment. The act of 1902, if applied retroactively, took in the last six months of the same calendar year (July–December, 1901), to ascertain the gross earnings thereunder.

B. It applied the new tax rate from July, 1902, to December, 1902, of the *same* calendar year to which the act of 1890 expressly applied, under which the *entire* tax had been levied and all or one-half thereof lawfully paid.

The act of 1902 *cannot* hence be applied except in a retroactive way and the repeal of the act of 1890 treated in the same retroactive manner. This we say violates the settled rules of intepretation and throws the doubt against the taxpayer, thereby violating the established rule. The principle in this regard could not be more clearly stated than is expressed in *White v. United States,* 191 U. S., 545, 552, thus:

> "But, after all, the main purpose of interpretation is to ascertain and carry into effect the object and purpose of the legislature in making the given law as expressed in the language used. Where it is claimed that a law is to have a retrospective operation, such must be clearly the intention, evidenced in the law and its purposes, or the court will presume that the law-making power is acting for the future only and not for the past; *that it is enacting a rule of conduct which shall control the future rights and dealings of men, rather than review and affix new obligations to that which has been done in the past.*"

In *United States v. American Sugar Refining Company,* 202 U. S., 563, 576, it was said:

> "It was certainly competent for Congress (with the consent of Cuba) to have given the treaty retrospective, immediate or prospective operation. Which did Congress do? And in reply we are to remember there is a presumption against retrospective operation,

> and we have said that words in a statute ought not to have such operation 'unless they are so clear, strong, and imperative, that no other meaning can be annexed to them, or unless the intention of the legislator cannot be otherwise satisfied' (*United States v. Burr,* 159 U. S., 178)."

The act of 1902 was a general law. Its *entire* operation was *in futuro*. There is nothing to be found in it indicating intended retroactive effect. Certainly, in the single instance of these trust companies operating under the act of 1890 and paying taxes thereunder, retroactive effect against them cannot properly be implied "unless the intention of the legislature cannot be otherwise satisfied." Manifestly such intention can be fully satisfied in giving to this part of the act of 1902 the full legal effect extended to all other parts and in permitting the repeal provision thereof in respect of the act of 1890 to operate without conflict with what had been fully accomplished in good faith under the act of 1890.

We submit, the judgments below should be reversed.

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